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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 MICHAEL ZELENY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, *et al.*,

15 Defendants.

16 Case No. CV 17-7357 JCS

17 Assigned to:  
The Honorable Richard G. Seeborg

18 Discovery Matters:  
The Honorable Thomas S. Hixson

19 **STIPULATION TO CONTINUE TRIAL**  
20 **AND PRETRIAL DATES DUE TO**  
21 **PENDING MOTION TO DISMISS**

22 Action Filed: December 28, 2017  
23 Trial Date: June 8, 2020

## I. RECITALS

1. Plaintiff Michael Zeleny (“Zeleny”) took initial discovery of defendants City of Menlo Park and Dave Bertini (collectively, the “City”), and Xavier Becerra in his official capacity (“Becerra”), including document discovery and a deposition of Chief Bertini.

2. Based on this discovery, Zeleny uncovered evidence, which he believes gives rise to a claim against New Enterprise Associates (“NEA”; collectively with the City and Becerra, “Defendants”) for conspiracy to violate his civil rights under 42 U.S.C. § 1983. NEA denies any wrongdoing or liability and disputes Zeleny’s allegations.

3. Zeleny amended his complaint in early April to name NEA as a defendant. The parties stipulated at that time to continue trial and pre-trial dates allow NEA to enter the case as a party and to resolve any pleading challenges.

4. NEA filed a Motion to Dismiss on May 9, 2019. [Dkt. No. 85].

5. On July 1, 2019, the Court granted a continuance of trial and pre-trial dates because NEA's Motion to Dismiss remained pending. [Dkt. No. 95].

6. On July 30, 2019, the Court issued its ruling granting NEA's motion with leave to amend. [Dkt. No. 98]. Zeleny timely filed a Second Amended Complaint, per the Court's order, on August 30, 2019. [Dkt. No. 99].

7. NEA again moved to dismiss the Second Amended Complaint on September 25, 2019. [Dkt. No. 102]. That motion remains pending and is currently set for hearing on November 14, 2019, one day before the current close of discovery.

8. Zeleny has sought to take additional discovery, including issuing deposition notices to the parties and third parties. Defendants have objected to the taking of depositions while the status of NEA remains unresolved. The parties agree that it would be unduly burdensome to the parties and third parties to take depositions while NEA's status as a defendant is still unsettled, and would result in potential duplication of depositions to allow NEA to participate.

9. The current schedule is as follows:

Discovery Cut-Off: November 15, 2019

1           Expert Disclosures:                   November 29, 2019  
2           Rebuttal Expert Disclosures:         December 20, 2019  
3           Expert Discovery Cut-Off:           January 10, 2010  
4           Dispositive Motion Hearings:       February 6, 2020  
5           Pre-Trial Conference:                May 20, 2020 at 10:00 a.m.  
6           Start of Trial:                        June 8, 2020 at 9:00 a.m.

7 See Order dated July 1, 2019 [Dkt No. 95]. The parties agree that the current schedule does not  
8 leave sufficient time to take needed discovery after the resolution of NEA's Motion to Dismiss.

9       10. The parties have agreed to continue the dates and deadlines by approximately 120  
10 days to allow them to complete discovery in an orderly fashion after the pleadings are settled.  
11 The parties have also taken into account the coming holiday season, which will make it more  
12 difficult to schedule depositions and other matters.

13 **II. STIPULATION**

14       Based on the foregoing, the parties hereby stipulate, and jointly request that the Court  
15 modify the schedule in this case, as follows:

16           Discovery Cut-Off:                   March 16, 2020  
17           Expert Disclosures:                  March 30, 2020  
18           Rebuttal Expert Disclosures:       April 20, 2020  
19           Expert Discovery Cut-Off:          May 11, 2020  
20           Dispositive Motions Hearings:      June 4, 2020  
21           Pre-Trial Conference:                August 13, 2020 at 10:00 a.m.  
22           Trial:                                September 7, 2020 at 9:00 a.m.

23       The parties are submitting a proposed order concurrently requesting these modifications.

24    *[Signature Page Follows]*

1 **It is SO STIPULATED.**

2 Dated: October 18, 2019

Respectfully submitted,

3 s/ Damion Robinson

4 David W. Affeld

5 Damion D. D. Robinson

Affeld Grivakes LLP

6 Attorneys for Plaintiff Michael Zeleny

7 s/ Noreen P. Skelly

8 Noreen P. Skelly

Office of the Attorney General

9 Attorneys for Defendant Xavier Becerra

10 s/ Todd H. Master

11 Todd H. Master

Howard Rome Martin & Ridley LLP

12 Attorneys for Defendants the City of Menlo Park

and Dave Bertini

13 s/ Roger R. Lane

14 Roger R. Lane

Foley & Lardner, LLP

15 Attorneys for Defendant New Enterprise Associates

16 # # #

17 Pursuant to Local Civil Rule 5-1(i)(3), I attest that the foregoing attorneys of record  
authorized the filing of this document and the inclusion of their electronic signatures.

18 Dated: October 24, 2019

s/ Damion Robinson

19 Damion Robinson

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1                   **PROOF OF SERVICE**

2                   I hereby certify that on October 24, 2019, I electronically filed the foregoing document  
3 using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will  
send a notice of electronic filing to the interested parties.

4                   s/ Damion Robinson  
5                   Damion Robinson